

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF
DELAWARE**

AMY ESKRA- BROWN,

Movant,

v.

BIG LOTS STORES, INC. d/b/a
BIG LOTS,

Debtor.

CIVIL DIVISION

No.: 24-11967 JKS

Chapter 11

**MOTION FOR RELIEF FROM
BANKRUPTCY STAY TO
PROCEED AGAINST INSURANCE
PROCEEDS**

Filed on behalf of Movant:

Amy Eskra-Brown

Counsel of Record for this Party

Wayne M. Chiurazzi, Esquire

Pa. I.D. #63595

Edward W. Wertman, Esquire

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Debtor.

MOTION FOR RELIEF FROM BANKRUPTCY STAY TO PROCEED AGAINST INSURANCE PROCEEDS

AND NOW comes Movant, Amy Eskra-Brown (hereinafter “Movant”) by and through her attorneys, **THE CHIURAZZI LAW GROUP** and **Wayne M. Chiurazzi Esquire**, and files the within Motion for Relief from Bankruptcy Stay to Proceed Against Insurance Proceeds against Big Lots Stores, Inc., d/b/a Big Lots (hereinafter “Debtor/Defendant”) in the above-captioned bankruptcy proceeding. In support thereof, Movant aver as follows:

- BACKGROUND FACTS -

Underlying Lawsuit

1. On or about August 21, 2021, Movant— *a business invitee* – sustained serious injuries and damages after falling backwards while attempting to sit in a chair located at 407 William Penn Highway, Monroeville, PA 15146. (“the subject premises”).
2. Due to such injuries, Movant filed a Complaint in Civil Action against Debtor/Defendant in Allegheny County¹, asserting a Negligence claim.

¹ Complaint in Civil Action attached hereto as *Exhibit A*.

Bankruptcy Filing by Defendant

3. Big Lots Stores, Inc. is a Pennsylvania-registered business entity doing business as “Big Lots” and operates throughout Allegheny County, including at the aforementioned subject premises.

4. On or about September 9, 2024, Debtor/Defendant filed a Notice of Suggestion of Bankruptcy for Big Lots, Inc., and Certain of its Affiliates under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware, to which the Chapter 11 cases are being jointly administered as Case No. 24-11967.

5. Per Debtor/Defendant’s filing of the aforementioned, all proceedings in the underlying Civil Action would be stayed pursuant to 11 U.S.C. § 362.

6. However, Debtor/Defendant continues to manage and operate its business as a debtor-in-possession pursuant to Section 1107(a), 1108, and 1116 of the Bankruptcy Code.

- RELIEF SOUGHT = WARRANTED -

7. Movant has an interest in moving the underlying case forward and avoiding unnecessary delay.

8. The Bankruptcy Code allows a court to “grant relief from the stay ... by terminating, annulling, modifying, or condition such stay ... for cause.” Bankruptcy Code § 362(d)(1).

9. As part of Debtor/Defendant’s responses to Plaintiff’s Interrogatories for proceedings in Allegheny County, PA docketed at GD-23-6899, it lists Starr Indemnity & Liability Company as its insurance carrier with a person and advertising injury limit at \$1,000,000 for the time period in which the incident happened. The policy number is [REDACTED].

10. Therefore, Movant seeks relief from stay because they seek only to proceed

against the Insurance Policy/Insurance Proceeds and would ultimately not interfere with the bankruptcy proceedings.

WHEREFORE, Movant respectfully requests that this Honorable Court enters an Order granting Movant's relief from stay to proceed against insurance proceeds.

Respectfully submitted,

THE CHIURAZZI LAW GROUP

/s/ Wayne M. Chiurazzi
Wayne M. Chiurazzi, Esquire
Counsel for Movant

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BIG LOTS,

Debtor.

ORDER OF COURT

AND NOW, this _____ day of _____, 2024, on consideration of the foregoing Motion for Relief from Stay filed by Amy Eskra-Brown is hereby **ORDERED** that the within Motion is **GRANTED**. Specifically, Movant may proceed against Big Lots Stores, Inc., d/b/a Big Lots for insurance proceeds and/or under the insurance policy relevant to the underlying Action.

BY THE COURT:

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

THE CHIURAZZI LAW GROUP

Signature: /s/ Wayne M. Chiurazzi

Name: Wayne M. Chiurazzi

Attorney No.: 63595

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all parties on the date and in the manner listed below:

<u> </u>	First Class Mail, Postage Prepaid
<u> </u>	Certified Mail – Return Receipt Requested
<u> </u>	Hand Delivery
<u> </u>	Facsimile Transmission
<u> </u>	Overnight Delivery
<u> X </u>	Electronic Mail / CM/ECF Filing

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Bankruptcy Counsel for Debtor, Big Lots, Inc

and via CM/ECF electronic service upon parties registered to receive notices.

THE CHIURAZZI LAW GROUP

DATE: OCTOBER 31, 2024

/s/ Wayne M. Chiurazzi

Wayne M. Chiurazzi, Esquire
Counsel for Movant

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

AMY ESKRA-BROWN,

CIVIL DIVISION

No.:

Plaintiff,

COMPLAINT

v.

BIG LOTS STORES, INC. d/b/a
BIG LOTS,

Defendant.

Filed on behalf of Plaintiff

Counsel of Record for this Party

Wayne M. Chiurazzi, Esquire
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Donna M. Flaherty, Esquire
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

AMY ESKRA-BROWN,

CIVIL DIVISION

No.:

Plaintiff,

v.

BIG LOTS STORES, INC. d/b/a
BIG LOTS,

Defendant.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claims in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THEIR OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THEIR OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICE TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

ALLEGHENY COUNTY LAWYER REFERRAL SERVICE

The Allegheny County Bar Association
3rd Floor Koppers Building, 436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555
www.acbalrs.org

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

AMY ESKRA-BROWN,

CIVIL DIVISION

No.:

Plaintiff,

v.

BIG LOTS STORES, INC. d/b/a
BIG LOTS,

Defendant.

COMPLAINT

AND NOW comes the Plaintiff, Amy Eskra-Brown, by and through her attorneys The Chiurazzi Law Group and Wayne M. Chiurazzi, Esquire and file the following Complaint:

1. The Plaintiff, Amy Eskra-Brown, is an individual and resident of the Commonwealth of Pennsylvania and County of Allegheny residing at 535 S. Trenton Avenue, Pittsburgh, PA 15221.
2. The Defendant, Big Lots Stores, Inc. d/b/a Big Lots (hereinafter "Defendant"), is a business entity registered to do business in the Commonwealth of Pennsylvania engaged in retail services with a principal place of business located at 4047 William Penn Highway, Monroeville, Allegheny County, PA 15146 yet at all time headquartered at 4900 E. Dublin Granville Road, Columbus, OH 43081.
3. At all times relevant hereto, Defendant acted by and through its employees, agents, servants, and/or workmen, in the furniture department who were, in turn, acting within the course and scope of their employment, agency, and/or service for same.

4. On or about August 21, 2021 in the Defendant's furniture department, Plaintiff Amy Eskra-Brown was lawfully on the premises as a business invitee of Defendant, trying out a chair for purchase.

5. At the abovementioned time and place, Plaintiff, Amy Eskra-Brown, was attempting to sit in the chair when said chair collapsed causing her to hit her head and causing her serious injury.

6. At all times relevant hereto, it was the duty of Defendant, by and through its respective trustees, directors, agents, servants, workmen, employees and/or other representatives to keep and maintain the chair in a reasonably safe condition for persons lawfully on the premises and chair, such as Plaintiff, Amy Eskra-Brown.

7. The above stated dangerous condition of the chair existed for a period sufficient that the Defendant and/or its agents had actual and/or constructive notice of the same.

8. The accident set forth previously was the sole, direct, legal, and proximate result of the negligence of Defendant in the following particulars:

- a. In failing to warn of the existence of the dangerous condition of the state of the chair;
- b. In failing to have personnel to warn or inspect said chair to keep business invitees such as the Plaintiff from the dangerous condition;
- c. In failing to assure that the chair was safe to sit upon for Plaintiff;
- d. In failing to maintain the chair and thus premises in a safe condition for Plaintiff;
- e. In failing to properly inspect area for any possible dangerous condition existing;
- f. In failing to properly supervise and assess the chair prior to letting business invitees such as the Plaintiff sit upon it;
- g. In failing to properly have the chair ready and in safe condition for business invitees such as the Plaintiff;

- h. Otherwise failing to exercise the proper degree of care for business invitees such as the Plaintiff;
- i. In failing to train its agents and/or employees so as to not cause a dangerous situation that Plaintiff encountered and caused her to sustain injuries; and
- j. In failing to hire competent people to maintain the chair.

9. As the sole, direct, legal, and proximate result of the negligence of the Defendant as aforesaid, the Plaintiff has suffered the following injuries:

- a. Head injury;
- b. Contusions lower back;
- c. Strain at thoracic back region;
- d. Strain to tendons; and
- e. Lumbar pain/strain.

10. As the sole, direct, legal, and proximate result of the negligence of the Defendant as aforesaid, the Plaintiff Amy Eskra-Brown has sustained the following damages:

- a. She has suffered and will continue to suffer great pain, suffering, mental anguish and embarrassment;
- b. She has been unable to enjoy the ordinary pleasures of life;
- c. She has had to undergo medical treatment;
- d. She has incurred bills/lien for medical treatment; and
- e. She has been unable to perform her normal daily activities.

WHEREFORE, the Plaintiff demands judgment in her favor against the Defendant, Big Lots Stores, Inc. d/b/a Big Lots, for an amount in excess of the applicable arbitration limits, exclusive of interest and costs.

Respectfully submitted,

The Chiurazzi Law Group

s/Wayne M. Chiurazzi

Wayne M. Chiurazzi, Esquire
Counsel for Plaintiff

VERIFICATION

THE UNDERSIGNED, Amy Eskra-Brown, avers that the statements of fact contained in the foregoing Complaint are true and correct to the best of her knowledge, information and belief, and are made subject to the penalties of 18 Pa. Cons. Stat. Ann. §4904 relating to unsworn falsification to authorities.

Date: 06/02/2023

/s/ Amy Eskra-Brown
Amy Eskra-Brown